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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,619	03/17/2006	Gerrit Hollemans	NL 031121	7652
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EXAMINER				
PAUL, DISLER				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/572,619

**Applicant(s)**

HOLLEMANS ET AL.

**Examiner**

DISLER PAUL

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF 298)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4,7, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mellone et al. (US 2004/0042629 A1) and Fernandez (US 4,817,153).

Re claim 1, Mellone et al. disclose of the electric device suitable for use in first orientations and in second orientations, having a first function and a second function said electric device comprising: a user interface having a first part and a second part, a detector for detecting, in use, an orientation selected from the first and the second orientations, the device being arranged to: perform, in response to either of the first orientations being detected by the detector: the first function in response to the first part; and the second function in response to the second part; and perform, in response to either of the second orientations being detected by the detector: the second function in response to the first part: and the first function in response to the second part (fig.6-7; par[0013,0016-0022,0032]/based on sensor in either ear wt orientation enable the production of stereo signals accordingly).

However, Mellone et al. fail to disclose of the detector comprising a gravity sensor for detecting gravity and the detector selecting the first or second orientation based on the output of the gravity sensor. Fernandez disclose of a system with detecting wherein detector comprising a gravity sensor for detecting gravity and the

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detector selecting the first or second orientation based on the output of the gravity sensor (fig.2-3; col.1 line 50-65; col.5 line 5-50/gravity responsive switch) for purpose of transforming a monaural signal produce by a microphone into a stereophonic signal. thus, taking the combined teaching of Mellone et al. and Fernandez as a whole, it would have been obvious for one of the ordinary skill in the art to have modify Mellone et al., with the gravity sensor for detecting gravity and the detector selecting the first or second orientation based on the output of the gravity sensor for the purpose of transforming a monaural signal produce by a microphone into a stereophonic signal.

The combined teaching of Mellone et al. and Fernandez as a whole, further teach of the wherein said detector detects in dependence on a history of the sense gravity, such that short glitches in the user interface are prevented when the orientation of the electric device changes relatively rapidly (col.3 line 65 & col. 7 line 15)

Re claim 2, the electric device as claimed in claim 1, wherein the first orientations are a mirror image of the second orientations, the mirror plane being substantially vertical (fig.6-7 wt (606,608); par[0019-0020]).

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Re claim 3, the electric device as claimed in claim 1, wherein said user interface comprises a first audio transducer forming the first part and a second audio transducer forming the second part, the first function being transducing a first electric signal and the second function being transducing a second electric (fig.4-6; par[0018,0024]).

Re claim 4, the electric device as claimed in claim 1, wherein the first and second parts of the user interface each comprises: a substantially disc-shaped portion shaped to fit in the concha of a human ear and said disc-shaped portion comprising an audio transducer and a protruding portion extending laterally from the disc-shaped portion, for said protruding portion carrying a conductive wire to the audio transducer (fig.2,6-7; par [0015]).

Re claim 7, the electric device as claimed in claim 1, wherein the detector comprises a further sensor, whereby the detector detects, in use, an orientation in dependence upon both the gravity sensor and the further sensor (fig.3; col.6 line 20-65).

Re claim 10 has been analyzed and rejected with respect to claim 1.

3. Claims 5,8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mellone et al. (US 2004/0042629 A1) and Fernandez (US 4,817,153) and Menzies (6,819,771 B2).

Re claim 5, the electric device as claimed in claim 4, However, the combined teaching of Mellone et al. and Fernandez as a whole, fail to disclose of wherein said electric device performs a further function and said electric device further comprises control mean for controlling the further function, However, Menzies disclose of a system wherein the electric device performs a further function and said electric device further comprises control mean for controlling the further function ( fig.1-2; col. 3 line 33-36/via hand packet sound is generated with rhythm additionally) for providing extemporaneous induced rhythmic sound with the movement of the body. Thus, taking the combined teaching of Mellone et al. and Fernandez and Menzies as a whole, it would have been obvious for one of the ordinary skill in the art to have modify the combined teaching of Mellone et al. and Fernandez as a whole, with the electric device performs a further function and said electric device further comprises control mean for controlling the further function for providing extemporaneous induced rhythmic sound with the movement of the body.

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Re claim 8, the electric device as claimed in claim 1, wherein the user interface is integrated with a piece of clothing (see claim 5 rejection).

4. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mellone et al. (US 2004/0042629 A1) and Fernandez (US 4,817,153) and further in view of Coninx (US 5,727,070).

Re claim 6, the electric device as claimed in claim 1, further comprising an audio transducer with a first function and second function and producing separate distinct signal on each ear (Mellone, par [0022,0024,0032]/distinct signals may be achieved) , However, the combined teaching of Mellone et al. and Fernandez as a whole, fail to disclose of the specific wherein the first function associated with the remote control means to increase in the loudness level in range level and second function associated with the remote control to decrease of the loudness level in range level. However, Coninx disclosed of a sound system wherein the functions being increased in the loudness level in range level and decrease of the loudness level in range level with association of the remote control (fig.2,4; col.2 line 53-62; col.5 line 4-13/controller to permit adjusting selective earphone volume) for the purpose of enabling the user to hear desired sound with sever background noise sound. Thus, taking the combined teaching of Mellone et al. and Fernandez and Coninx as a whole, it



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would have been obvious for one of the ordinary skill in the art at the time of the invention to have modify the combined teaching of Mellone et al. and Fernandez as a whole, by incorporating the system wherein the functions being increased in the loudness level in range level and decrease of the loudness level in range level with the remote control for the purpose of enabling the user to hear desired sound with sever background noise sound.

5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mellone et al. (US 2004/0042629 A1) and Fernandez (US 4,817,153) and further in view of Osano (US 6,961,591 B2).

Re claim 9, the entertainment system wit the electric device in claim 1, comprising: an electric apparatus for processing at least one from an audio signal and a video signal (Mellone, par [0015,0018,0022,0031]), However, the combined teaching of Mellone et al. and Fernandez as a whole, fail to disclose of the remote control for remotely controlling the processing, said remote comprising an electric device. But, Osano disclose of the system wherein the remote control for remotely controlling the processing with said remote comprising an electric device (fig.12, col.14 line 58 up to col.15 line 15) for the purpose of optimally set the ambient sound according to earphone type. Thus, taking the combined teaching of Mellone et al. and Fernandez and Osano as a whole, it would have been obvious for one

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of the ordinary skill in the art at the time of the invention to have modify the combined teaching of Mellone et al. and Fernandez as a whole, by incorporating the system wherein the remote control for remotely controlling the processing for the purpose of optimally set the ambient sound according to earphone type.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Disler Paul whose telephone number is 571-270-1187. The examiner can normally be reached on 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chin Vivian can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. P./  
Examiner, Art Unit 2615

/Vivian Chin/  
Supervisory Patent Examiner, Art Unit 2615